

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA
and THE STATE OF TEXAS
ex rel. MICHAEL A. REHFELDT,

Plaintiffs,

v.

Case No.: 3-09-CV-0203-B

VITAS HEALTHCARE CORPORATION,
et al.

Defendants.

**JOINT MOTION TO EXTEND TIME
FOR SERVICE OF PROCESS UNDER RULE 4(M)**

Relator Michael A. Rehfeldt and Defendants Vitas Healthcare Corporation and Vitas Innovative Hospice Care of San Antonio LP (collectively, the “Defendants”) hereby move pursuant to Rule 4(m) of the Federal Rules of Civil Procedure for an extension of time up to and including January 15, 2012 for Relator to serve his complaint in this matter and state as follows:

1. The Court unsealed the complaint on November 9, 2011. (D.E. 41). The current deadline for service of the complaint is October 30, 2012.

2. Rule 4(m) of the Federal Rules of Civil Procedure provides that the court should extend the date by which a plaintiff must serve the complaint beyond an initial period of 120 days upon a showing of good cause. Fed. R. Civ. P. 4(m) (“[I]f the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.”) If good cause is not found, then the court may, in its discretion, still extend the time for service. *See,*

Thompson v. Brown, 91 F.3d 20, 21 (5th Cir. 1986) (holding court has discretion to permit extension of time for service absence showing of good cause).

3. The United States has continued its investigation of this matter. The Defendants and the United States Department of Justice, which is the real party in interest, have engaged and plan to continue to engage in discussions intended, at a minimum, to narrow the scope of the claims at issue. This has included the exchange of documents, discussions about the merits and substance of the allegations, and presentations regarding expert review of patient charts. Due to the complexity of the issues and the need to gather and exchange additional information, these discussions will not produce a resolution by the October 30, 2012 deadline for service of process.

4. Two other *qui tam* False Claims Act cases against Defendants, which the United States is investigating in conjunction with its investigation of this case, have recently been unsealed. In *United States ex rel. Urick v. Vitas HME Solutions, Inc. et al.*, 08-CA-0663-OG, the United States District Court for the Western District of Texas granted a similar joint motion for extension of the time for service of process to January 15, 2013 – the same date sought in this motion. Likewise, in *United States ex rel. Spottiswood v. Vitas Healthcare Corporation et al.*, 07-C-4566, the parties sought and the United States District Court for the Eastern District of Illinois granted an extension of the time for service to the same date, January 15, 2013.

5. As in the above-captioned actions, Relator and Defendants request that the Court grant a continuance of the deadline for service of the complaint to January 15, 2013, so that Defendants and the United States can continue their discussions of the substantive issues. Relators and Defendants believe that the continuance of the discussions will be valuable and that commencement of active litigation at this time, and on a different schedule than the other *qui tam*

actions, would result in the potentially unnecessary expenditure of resources by the Parties and the Court.

6. Two previous extensions of the deadline for service have been made.

7. This request for an extension is made in good faith and not for the purpose of delay. The relief sought will not prejudice any party.

8. The parties' interests to continue their discussions and conserve resources establish good cause for an extension under Rule 4(m). Alternatively, if the Court does not find that the Parties have shown "good cause" to grant an extension of time, the Parties respectfully request the Court to exercise its discretion to grant an extension of time to serve the complaint. A proposed Agreed Order is attached as Exhibit A.

WHEREFORE, Relator Michael A. Rehfeldt and Defendants Vitas Healthcare Corporation and Vitas Innovative Hospice Care of San Antonio LP respectfully move this Court for an Order extending until January 15, 2013 the deadline for Relator to serve his complaint.

Certificate of Conference

Pursuant to Local Rule 7.1(b), counsel for the Relator who makes this joint filing has conferred with counsel for the Vitas Defendants and is authorized to represent that the Defendants join in this request for an enlargement. Counsel for the Relator has also conferred with counsel for Defendant Keith Becker, who does not oppose this motion. Additionally, counsel for Relator has conferred with counsel for the United States and is authorized to represent that the United States consents to this motion.

Dated: October 30, 2012

Respectfully submitted,

s/ David T. Moran _____
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Certificate of Service

On October 30, 2012, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

s/ J. Elliott Walthall
J. Elliott Walthall

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_____ /

PROPOSED ORDER

Upon consideration of the Joint Motion to Extend Time for Service of Process Under Rule 4(m), and finding good cause shown, it is hereby **ORDERED**:

(1) The Agreed Motion to Extend Time of Service of Process Under Rule 4(m) is

GRANTED;

(2) The time for effecting service of process is extended until January 15, 2013.

DONE AND ORDERED in Chambers, at Dallas, Texas this ___ day of _____ 2012.

United States District Court
for the Northern District of Texas

CC: counsel of record